

- 1 person) aspect of the Event, and was viewed by, accessible to, and  
2 enjoyed by in-person Event attendees.
- 3 b. None of the Valuable WBDI in the Event was used at all in Musk's  
4 keynote speech for the Event.
- 5 c. Although the livestream Event Recording continues for about 80  
6 additional minutes after Musk finishes his keynote speech, and  
7 although the livestream Event Recording spends substantially all of  
8 those 80 minutes documenting the Event and what is happening during  
9 it, from numerous different camera viewpoints, none of the Valuable  
10 WBDI IP in the Event ever appears on the Event Recording as a focal  
11 point for any camera view (with the possible single exception of six  
12 seconds nearly at the very end of the Event Recording where the  
13 Batmobile is arguably a camera focus).
- 14 d. All of the Valuable WBDI in the Event only ever appears on camera  
15 in the Event Recording incidentally, arguably requiring active  
16 indication for a casual viewer even to notice it.
- 17 e. Warner Bros. Pictures' trademarked water tower appears for less than  
18 a full second on the Event Recording, and there is the distinct sense by  
19 abrupt motion of the camera away from it when it does appear, that the  
20 camera operator immediately understood that showing the water tower  
21 was prohibited and a mistake. (Event Recording at 0:40:00-0:40:01.)
- 22 f. The Event Recording one point includes a substantial portion of a  
23 very-well known sound recording of Haddaway performing "What Is  
24 Love?" audibly performed on the Event Recording's soundtrack.  
25 (Event Recording 0:24:20-0:25:46.) However, the Haddaway sound  
26 recording is only partially performed on the Event Recording, before  
27 all sound on the Event Recording cuts off for a time, then followed by  
28

1 nothing even on the visual feed of the Event Recording or screen saver  
2 on the Event Recording for an extended period, until the Event  
3 Recording eventually resumes both visual images and a soundtrack.  
4 However, after it resumes, for the entire remainder of the Event  
5 Recording, the Event Recording soundtrack does not include any  
6 readily recognizable popular music, and instead features only generic,  
7 almost entirely instrumental, electronic dance music.

8 183. All of the foregoing, especially the Haddaway sound recording  
9 incident identified in 182f above, are telltale signs that active policing clearance  
10 efforts had been put in place before the Event, and were effectively being  
11 implemented during the entirety of the Event livestream, including during Musk's  
12 keynote speech. The signs specifically are that the policing protocols were actually  
13 implemented effectively for the Valuable WBDI IP in the Event, and for at least  
14 some valuable third party music content, but just not for any of Alcon's exclusively  
15 owned property, including not for BR2049's protected elements.

16 184. Plaintiff makes the allegations in paragraph 185 below, including all  
17 subparagraphs, as **WBDI Actual Policing of Musk and Tesla During the Event**  
18 **Alternative Theory 1:**

19 185. Plaintiff alleges on information and belief, subject to need for  
20 discovery, that WBDI had the actual and practical ability to police Musk's and  
21 Tesla's IP law compliance and contractual compliance during the Event, including  
22 during the live and live-streamed display of Musk's keynote speech, and that  
23 WBDI in fact actually did so with respect to separate IP content wholly-owned by  
24 WBDI or one or more WBDI subsidiaries, and also with respect to third party IP  
25 content; WBDI just either intentionally or negligently failed to do so as to Alcon's  
26 exclusively owned property, including BR2049 and K.

27 ///

1 a. **WBDI Actual Policing of Musk and Tesla During the Event**

2 **Alternative Theory 1.1:** Plaintiff further alleges on information and  
3 belief, subject to the need for discovery, as one specific possibility,  
4 that what specifically happened under WBDI Actual Policing of Musk  
5 and Tesla During the Event Alternative Theory 1 was as follows:

- 6 (i). The best practice and standard operating procedure for  
7 studios conducting live events where there will be a physical  
8 (in-person) aspect, a livestream aspect, and aspects of IP  
9 shopping rights and granting of IP licenses and provision of  
10 actual IP content by studio, as were all involved here, and  
11 WBDI's actual standard practice and policy, is that the  
12 livestream terms must be finalized and understood before  
13 finalization of the IP terms. Otherwise, if the IP shopping is  
14 conducted and IP license agreements are finalized prior to  
15 understanding what the livestream rights are or are not (*e.g.*,  
16 whether there will or will not be any livestreaming at all, and  
17 for what territories), the IP licenses and clearances risk being  
18 incorrect and potentially useless. Different permutations of  
19 livestream possibilities require different IP clearances, and on  
20 case-by-case basis depending on the particular IP in question.  
21 (ii). There was a mistake made by WBDI or Tesla, such that  
22 for the Event, whether or not previously agreed, the actual  
23 livestream terms in the Event Contract were not communicated  
24 to WBDI's licensing and clearance professionals tasked with  
25 handling the IP shopping and IP licensing issues, until after the  
26 IP work had been substantially completed, and not until  
27 relatively near the day of the Event.  
28

1 (iii). As a result, an emergency situation arose where the  
2 Valuable WBDI IP in the Event, and any other IP from third  
3 parties, had not been properly cleared for belatedly  
4 communicated livestream terms. WBDI's ability to implement  
5 all or some of its usual clearance and policing protocols was  
6 also impaired.

7 (iv). If the Event partners to WBDI had been someone less  
8 important than Tesla and Musk, WBDI might have  
9 communicated that there could be no livestream, or that the  
10 scope of the livestream would have to be sharply restricted.

11 (v). Here, though, WBDI allowed the livestream to go forward,  
12 and, as an emergency clearance fix or patch, shortly before the  
13 commencement of the Event, WBDI communicated directions  
14 to Tesla, and expected performers, including Musk, and the  
15 production and direction team in the production truck or video  
16 village, that the livestream could go forward, but that Tesla, and  
17 all performers, and the production and direction team, were all  
18 to understand and take steps such that none of the Valuable  
19 WBDI IP in the Event was to be featured in the keynote speech,  
20 or publicly performed or displayed on the livestream feed,  
21 except incidentally, because some or all of it was not properly  
22 cleared for such uses.

23 (vi). Further, although WBDI easily could have modified or  
24 supplemented the above emergency fix or patch instruction  
25 expressly to include BR2049 protected elements and other  
26 Alcon exclusive-owned propertyas subject to the same  
27 restrictions, WBDI intentionally or negligently failed to do so.  
28

186. ***WBDI Actual Policing of Musk and Tesla During the Event***  
***Alternative Theory 2:*** Plaintiff alleges on information and belief, subject to the need for discovery, as an alternative theory, that, to the extent that WBDI failed to structure the Event or Event Contract to provide WBDI with actual ability to police violation by Tesla or Musk of IP rights of either WBDI or its subsidiaries or any third party, or if WBDI had such actual ability but failed actually to exercise it, such failure or failures was a material departure from and violation of WBDI's own standard practices and policies, to Alcon's reasonably foreseeable and actual prejudice.

### FIRST CLAIM FOR RELIEF

*Direct Copyright Infringement in Violation of 17 U.S.C. § 501, et seq.*

### *Against Defendants WBDI, Tesla and Musk*

187. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and in each paragraph of this SAC hereafter, as if set forth herein in full.

188. To the extent any of the allegations or theories in this First Claim for Relief are inconsistent with other allegations or theories pled in this SAC, they are pled in the alternative.

189. Plaintiff is the author and copyright owner of the motion picture “Blade Runner 2049,” registered with the United States Copyright Office on October 6, 2017, registration number PA0002056792. That is the registered infringed work.

190. Defendants Tesla and Musk created at least two infringing works: 1) Exhibit C; and 2) the Event Recording, in the record as Exhibit 2 to the February 4, 2025 Omnibus Declaration of Chris Marchese) (“Event Recording”). The specifically infringing portions of the Event Recording are the approximately 11

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1 seconds at the opening of the presentation where Exhibit C is displayed and Musk's  
2 accompanying voiceover.

3 191. Musk and Tesla: Defendant Tesla and Musk are direct infringers, in  
4 that they violated Plaintiff's exclusive rights in BR2049 in each of the following  
5 ways, with the conduct alleged constituting both actual copying and unlawful  
6 appropriation in each instance. Defendant WBDI: is a direct infringer in that the  
7 violation of Alcon's public display rights as alleged in this SAC and paragraph  
8 191f below was conducted on, and transmitted over, WBDI-owned or WBDI-  
9 controlled property, infrastructure and systems (specifically including WBDI  
10 livestreaming infrastructure systems), and WBDI engaged in volitional conduct as  
11 discussed paragraphs 192-193 below:

- 12 a. Violation of Reproduction Right, 17 U.S.C. § 106(1). Defendants  
13 Musk and Tesla infringed this exclusive right of Alcon by the conduct  
14 alleged in paragraphs 101, 101a and 101b in this SAC: literal copying  
15 of the entirety of BR2049 or of protectable elements of BR2049 such as  
16 still images like those in Exhibits A and B, or a partial videorecording  
17 of BR2049, to an AI image generator. These allegations are made on  
18 the same information and belief and alternative pleading theory basis as  
19 set forth in paragraphs 101, 101a and 101b. (**Exhibit C AI Generation**  
20 **Process Alternative Theory 1.**)
- 21 b. Violation of Reproduction Right, 17 U.S.C. § 106(1). Defendants  
22 Musk and Tesla infringed this exclusive right of Alcon by the conduct  
23 alleged in paragraphs 101 and 101c in this FAC: literal copying of  
24 another work (a "licensed image") as part of the AI image generation  
25 process, but the process nonetheless involved an AI image generator  
26 engaging in literal copying of the entirety of BR2049 or of protectable  
27 elements of BR2049 such as still images like those in Exhibits A and B,  
28

1 or a partial videorecording of BR2049, to an AI image generator, and  
2 put into the image generator by Musk and Tesla, or persons under their  
3 direction and control. These allegations are made on the same  
4 information and belief and alternative pleading theory basis as set forth  
5 in paragraphs 101 and 101c. (*Exhibit C AI Generation Process*  
6 *Alternative Theory 2.*)

7 c. Violation of Reproduction Right, 17 U.S.C. § 106(1). Under the law of  
8 the Ninth Circuit as usually interpreted, all of the violations of Alcon's  
9 right to prepare derivative works are also necessarily violations of  
10 Alcon's reproduction rights.

11 d. Violation of Right to Prepare Derivative Works, 17 U.S.C. § 106(2).  
12 The Exhibit C image is an unauthorized derivative work of BR2049,  
13 which impermissibly incorporates at least the following protected  
14 elements of BR2049 (as the protected elements are detailed in  
15 Paragraph 13 of Appendix 2 of this SAC): i) Iconic Still Images which  
16 Evoke Qualitatively Important Scenes or Sequences of BR2049; ii) the  
17 character K; iii) Urgent Human-AI Decision Point Theme; iv) Mood of  
18 Anxiety, Fear and Urgency, and specifically about the Human-AI  
19 Decision Point; v) Setting; and vi) Selection and Arrangement of  
20 elements, as alleged in paragraph 13f of Appendix 2 of this SAC. See  
21 paragraphs 102-122 of this SAC and Exhibits A-D. Alcon further  
22 alleges that the Exhibit C image must be treated as an unauthorized  
23 derivative work, because Musk by his commentary during the Event  
24 and in the Event Recording effectively represents to the audience that it  
25 is either itself a protected still image of BR2049, or a derivative work  
26 of BR2049, and that Musk and Tesla should therefore be estopped to  
27 contend otherwise. *Id.*

1 e. Violation of Right to Prepare Derivative Works, 17 U.S.C. § 106(2).

2 The Event Recording is an unauthorized derivative work of BR2049,  
3 which impermissibly incorporates at least the following protected  
4 elements of BR2049 (as the protected elements are detailed in  
5 Paragraph 13 of Appendix 2 of this SAC): i) Iconic Still Images which  
6 Evoke Qualitatively Important Scenes or Sequences of BR2049; ii) the  
7 character K; iii) Urgent Human-AI Decision Point Theme; iv) Mood of  
8 Anxiety, Fear and Urgency, and specifically about the Human-AI  
9 Decision Point; v) Setting; and vi) Selection and Arrangement of  
10 elements, as alleged in paragraph 13f of Appendix 2 of this SAC. See  
11 paragraphs 102-122 of this SAC and Exhibits A-D. Alcon further  
12 alleges that the Exhibit C image must be treated as an unauthorized  
13 derivative work, because Musk by his commentary during the Event  
14 and in the Event Recording effectively represents to the audience that it  
15 is either itself a protected still image of BR2049, or a derivative work  
16 of BR2049, and that Musk and Tesla should therefore be estopped to  
17 contend otherwise. *Id.*

18 f. Violation of Right to Display Work Publicly, 17 U.S.C. § 106(5). The  
19 display of Exhibit image both i) at the live Event and ii) during the  
20 livestream of the Event in the United States violated Alcon's public  
21 display rights in BR2049 and its protected elements, and all three  
22 Defendants have direct infringement liability. Musk and Tesla actively  
23 conducted the event resulting in the display, paragraphs 102-122, and  
24 the display occurred over WBDI-owned or -controlled systems, to both  
25 a large in-person audience, and also to a worldwide audience, including  
26 viewers in the United States. SAC, paragraph 109.

27 ///

1 192. WBDI engaged in volitional conduct as that term is used in the context  
2 of infringement of the 17 U.S.C. § 106(5) public display right. The volitional  
3 conduct requirement is a term of art that means sufficient facts for a finding of  
4 proximate cause, meaning that the defendant was a direct cause of the infringement  
5 pursuant to the way that proximate cause is used in the traditional tort context.  
6 Within that framework, at least in the context of online servers and similar  
7 situations, volitional conduct may be found where the defendant did any of the  
8 following: (1) exercised control; (2) selected any material for upload or storage; or  
9 (3) instigated any copying, storage or distribution.

10 193. Here, WBDI was actively involved and either exercised control and/or  
11 instigated copying, storage or distribution of the infringed work, which here is  
12 BR2049. WBDI held itself out to Musk and Tesla as having rights that WBDI does  
13 not have, (SAC, ¶¶ 32-36), led Musk and Tesla to believe until very late in the  
14 process that Musk and Tesla would be allowed to use Exhibit A in the Event  
15 pursuant to a license from Warner Bros. Pictures, (SAC, ¶¶ 59-78), caused Warner  
16 Bros. Pictures to actually provide a high resolution image of protected elements of  
17 BR2049 to Musk and Tesla, (SAC, ¶¶ 64-65), and also engaged in a combination of  
18 intentional or negligent representations combined with silence (failure to make  
19 corrective speech) that resulted in Musk and Tesla potentially understanding they  
20 had U.S. copyright permission to use BR2049 elements, or effective immunity for  
21 BR2049 infringement claims under U.S. law. (SAC, ¶¶ 92-95.) In addition, given  
22 Musk's and Tesla's history with the BR2049 property and how they use it for  
23 product reveals, (SAC, ¶¶ 32-36), and Musk's disdain for intellectual property law,  
24 (SAC, ¶¶ 27-31), letting Musk and Tesla contract for and conduct the Event while  
25 providing content for them, (SAC, ¶¶ 47-54), combined with causing them to  
26 anticipate being able to use BR2049 in Musk's keynote warrants a finding of  
27 proximate cause, including under the instigation prong. Plaintiff also contends that  
28

1 WBDI's intentional or negligent failure actively to police Musk and Tesla,  
2 especially after receiving the Alcon Event Directions to WBDI and leading Alcon to  
3 believe that WBDI would follow them also contributes to the conclusion that a  
4 finding of sufficient active involvement to warrant a proximate cause finding of  
5 volitional conduct exists. (SAC, ¶¶ 88-92, 98, 155-177, 179-185.)

6 194. Alcon alleges and contends that where substantial similarity analysis is  
7 required, Defendants' acts of infringement above as to the character K are subject to  
8 the "story being told," distinct delineation, and/or bodily appropriation tests  
9 applicable to characters, and that the character K satisfies them. Alcon also stands  
10 by and advances its derivative work reference leveraging theory articulated in  
11 Alcon's Memorandum of Points and Authorities in Opposition to Musk and Tesla's  
12 Motion to Dismiss Plaintiff's First Amended Complaint. Alcon believes that theory  
13 is within the parameters of existing copyright case law, but to the extent it is not,  
14 Alcon advances it as a novel theory. Alcon also advances the theory that Musk and  
15 Tesla's intentions to infringe must be taken into account in favor of substantial  
16 similarity findings and analysis. Alcon also believes that is within the parameters of  
17 existing case law, but to the extent it is not, Alcon advances it as a novel theory.

18 195. The foregoing acts of Defendants WBDI, Tesla and Musk infringed  
19 upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce,  
20 create derivative works, display, distribute and publicly perform BR2049 and its  
21 protectible elements. Such actions and conduct constitute copyright infringement in  
22 violation of 17 U.S.C. § 501, *et seq.*

23 196. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and  
24 registered the exclusive rights and privileges in and to the copyrights of the above-  
25 referenced work in accordance with 17 U.S.C. § 408.

26 197. Plaintiff suffered damages as a result of Defendants' unauthorized use  
27 of BR2049 and its protectible elements.

1 198. Plaintiff is entitled to temporary, preliminary and/or permanent  
2 injunctive relief, pursuant to 17 U.S.C. § 502(a).

3 199. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to  
4 impoundment of all materials used to achieve the infringement, and records  
5 documenting Defendants' exploitation of their infringements, including without  
6 limitation all materials used by Defendants or any image generation tool employed  
7 by them to generate the Exhibit C Image.

8 200. Plaintiff is entitled to recover and seeks its actual damages and any  
9 additional profits of Defendants WBDI, Tesla and Musk attributable to the  
10 infringements, under 17 U.S.C. § 504(b).

11 201. Plaintiff also is entitled to elect to recover and seek statutory damages  
12 under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than \$750 or more than  
13 \$30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and  
14 believes and on that basis alleges that Defendants' acts of copyright infringement, as  
15 alleged above, were willful, intentional, and malicious. Such acts subject  
16 Defendants to liability for statutory damages under Section 504(c)(2) of the  
17 Copyright Act in the sum of up to \$150,000 per infringement.

18 202. Within the time permitted by law, Plaintiff will make its election  
19 between actual damages and profit disgorgement, or statutory damages.

20 203. Plaintiff also is entitled to a discretionary award of attorney fees under  
21 17 U.S.C. § 505.

22 204. Plaintiff seeks or reserves the right to seek any or all of the above forms  
23 of relief, in addition to prejudgment interest to the extent legally available and  
24 Plaintiff's costs.

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**SECOND CLAIM FOR RELIEF**

***Vicarious Copyright Infringement in Violation of 17 U.S.C. § 501, et seq.***

***Against Defendants WBDI, Tesla and Musk***

205. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and each paragraph of this SAC hereafter, as if set forth herein in full.

206. To the extent any of the allegations or theories in this Second Claim for Relief are inconsistent with other allegations or theories pled in this SAC, they are pled in the alternative.

207. If Defendants WBDI, Tesla and Musk are not each liable as direct infringers of BR2049, they are secondarily liable for the infringements directly committed by individual agents, contractors, or other infringers presently unknown (the “Direct Infringers”) under the vicarious infringement doctrine.

208. Defendants Musk and Tesla. As to Musk and Tesla, if they are not themselves the direct infringers, it appears highly likely that they are the masters or employers of the direct infringers, or otherwise had the right and ability to supervise and control the Direct infringers, and that the Direct Infringers infringed in the course and scope of their work for Musk and Tesla. (SAC, ¶¶ 100-122.) It thus appears highly likely that Musk and Tesla would have liability under traditional respondeat superior doctrine, and Alcon pleads that they do. The case law on vicarious copyright infringement appears less than entirely clear on whether such traditional theory respondeat superior vicarious liability for copyright infringement is to be pled as a subset of direct infringement, or under a vicarious infringement claim. Alcon believes that its direct infringement allegations against Musk and Tesla cover the traditional respondeat superior theory, but in the event that theory is more properly placed in a vicarious infringement claim, Alcon pleads it here. Alcon does not here plead as against Musk and Tesla the “direct financial

benefit” and “right and ability to supervise” vicarious infringement theory crafted for cases not within traditional respondeat superior liability.

209. Defendant WBDI. WBDI had the right and ability to supervise the infringing activity that all the Direct Infringers committed. (SAC, ¶¶ 155-186.) They were also notice actively to exercise their supervisory rights and powers, both because Musk and Tesla are inherently high risks to infringe against BR2049 in particular, (SAC, ¶¶ 27-31), and because Alcon put WBDI on notice with the Alcon Event Directions to WBDI and WBDI intentionally or negligently failed to follow them, after indicated to Alcon that WBDI would perform them. (SAC, ¶¶ 88-92, 98.)

210. WBDI obtained a qualifying level of direct financial benefit from Musk and Tesla and their infringing conduct, and the opportunity to infringe BR2049 was a substantial part of the draw to Musk and Tesla for the monies they paid to WBDI for the overall Event. (SAC, ¶¶ 32-36, 47-54.)

211. Alcon also alleges and contends that WBDI took enough actions to pursue the Exhibit A “clip licensing” plan such that, although it was not ultimately consummated, it went far enough that it should be treated as satisfying the draw and directly financial benefit analyses of vicarious copyright infringement law. WBDI held itself out to Musk and Tesla as having rights that WBDI does not have, (SAC, ¶¶ 32-36), led Musk and Tesla to believe until very late in the process that Musk and Tesla would be allowed to use Exhibit A in the Event pursuant to a license from Warner Bros. Pictures, (SAC, ¶¶ 59-78), caused Warner Bros. Pictures to actually provide a high resolution image of protected elements of BR2049 to Musk and Tesla, (SAC, ¶¶ 64-65), set up or proposed an associated payment, (SAC, ¶ 63), and also engaged in a combination of intentional or negligent representations combined with silence (failure to make corrective speech) that resulted in Musk and Tesla potentially understanding they had U.S. copyright

1 permission to use BR2049 elements, or effective immunity for BR2049  
2 infringement claims under U.S. law. (SAC, ¶¶ 92-95.)

3 212. Alcon contends that the Ninth Circuit case law on the directness of the  
4 tie required between the financial benefit and the infringement is strict enough that  
5 it is possible that even the above facts would not be found close enough. To the  
6 extent that is the case, Alcon contends and advances that the relationship here  
7 between WBDI and Musk and Tesla is close enough to cases like *Fonovisa v.*  
8 *Cherry Auction, Inc.*, 76 F.3d 259 (1996), and the underlying fundamental  
9 situations and reasons that led to the vicarious infringement doctrine in the first  
10 place, that vicarious liability should be imposed on WBDI, even if that might  
11 require a relaxation of some Ninth Circuit law on the strictness of the link required  
12 between infringement and direct financial benefit.

13 213. Accordingly, all Defendants had an incentive to permit infringement  
14 by the Direct Infringers.

15 214. The foregoing acts of Defendants WBDI, Tesla and Musk infringed  
16 upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce,  
17 create derivative works, and publicly display BR2049 and its protectible elements.  
18 Such actions and conduct constitute copyright infringement in violation of 17  
19 U.S.C. § 501, *et seq.*

20 215. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and  
21 registered the exclusive rights and privileges in and to the copyrights of the above-  
22 referenced work in accordance with 17 U.S.C. § 408.

23 216. Plaintiff suffered damages as a result of Defendants' unauthorized use  
24 of BR2049 and its protectible elements.

25 217. Plaintiff is entitled to temporary, preliminary and/or permanent  
26 injunctive relief, pursuant to 17 U.S.C. § 502(a).

27 218. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to  
28

1 impoundment of all materials used to achieve and records documenting  
2 Defendants' exploitation of, their infringements, including without limitation all  
3 materials used by Defendants or any image generation tool employed by them to  
4 generate the Exhibit C Image.

5 219. Plaintiff is entitled to recover and seeks its actual damages and any  
6 additional profits of Defendants WBDI, Tesla and Musk attributable to the  
7 infringements, under 17 U.S.C. § 504(b).

8 220. Plaintiff also is entitled to elect to recover and seeks statutory damages  
9 under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than \$750 or more  
10 than \$30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and  
11 believes and on that basis alleges that Defendants' acts of copyright infringement,  
12 as alleged above, were willful, intentional, and malicious. Such acts subject  
13 Defendants to liability for statutory damages under Section 504(c)(2) of the  
14 Copyright Act in the sum of up to \$150,000 per infringement.

15 221. Within the time permitted by law, plaintiff will make its election  
16 between actual damages and profit disgorgement, or statutory damages.

17 222. Plaintiff also is entitled to a discretionary award of attorney fees under  
18 17 U.S.C. § 505.

19 223. Plaintiff seeks or reserves the right to seek any or all of the above  
20 forms of relief, in addition to prejudgment interest to the extent legally available  
21 and Plaintiff's costs.

22 **THIRD CLAIM FOR RELIEF**

23 ***Contributory Copyright Infringement in Violation of 17 U.S.C. § 501, et seq.***

24 ***Against Defendants WBDI, Tesla and Musk***

25 224. Plaintiff repeats, re-alleges and incorporates herein by reference each  
26 and every allegation set forth in all of the foregoing paragraphs, and each  
27 paragraph of this SAC hereafter, as if set forth herein in full.

1           225. To the extent any of the allegations or theories in this Third Claim for  
2 Relief are inconsistent with other allegations or theories pled in this Complaint,  
3 they are pled in the alternative.

4           226. If Defendants WBDI, Tesla and Musk are not individually liable as  
5 direct infringers of BR2049, they are secondarily liable for the infringements  
6 committed by the Direct Infringers under the contributory infringement doctrine.

7           227. Defendants WBDI, Tesla and Musk had, or should have had,  
8 knowledge of the infringements of the Direct Infringers.

9           228. Tesla and Musk. Tesla and Musk plainly intentionally included the  
10 Exhibit C image in the October 10, 2024 Tesla presentation, and they could plainly  
11 see that it was not an actual still image from BR2049, but rather a stylized copy  
12 likely to found infringing. Under at least one of Alcon's alternative theories, they  
13 also all knew that Alcon had refused permission to use BR2049 or any of its  
14 elements in the presentation or in connection with it.

15           229. WBDI. WBDI was conducting clearance for the Event and either  
16 knew or should have known of the infringing conduct by the Direct Infringers.  
17 WBDI was plainly on notice pursuant to the Alcon Event Directions to WBDI to  
18 check on and actively police Musk and Tesla against infringement of BR2049, but  
19 intentionally or negligently failed to do so when it could, meeting at least a should  
20 have known or willful blindness standard of knowledge, even if WBDI did not  
21 actually know about Musk's and Tesla's infringement before and at the time of the  
22 Event. Furthermore, regardless, Plaintiff alleges on information and belief, subject  
23 to the need for discovery, that WBDI definitely knew when it saw Musk's keynote  
24 speech that his and Tesla's actions were infringing, or, at latest, on October 16,  
25 2024 when Alcon complained.

26           230. Defendants WBDI, Tesla and Musk either materially contributed to or  
27 induced the infringements. Tesla and Musk materially contributed to the direct  
28

1 infringements by including the Exhibit C image in Musk's presentation. Plaintiff is  
2 informed and believes and on that basis and subject to the need for discovery  
3 alleges that Musk was determined specifically to reference BR2049 and an image  
4 from it in the presentation, and his determination induced the direct infringements  
5 by the Direct Infringers of creating the infringing Exhibit C image. Defendant  
6 WBDI materially contributed to the direct infringements at the very least in that the  
7 event display, distribution and public performance aspects of the infringement  
8 occurred at WBDI's Burbank, California studio lot, and with the use and support of  
9 WBDI's facilities and technology.

10 231. WBDI also materially contributed to, induced, or encouraged  
11 infringement by WBDI holding itself out to Musk and Tesla as having rights that  
12 WBDI does not have, (SAC, ¶¶ 32-36), led Musk and Tesla to believe until very  
13 late in the process that Musk and Tesla would be allowed to use Exhibit A in the  
14 Event pursuant to a license from Warner Bros. Pictures, (SAC, ¶¶ 59-78), caused  
15 Warner Bros. Pictures to actually provide a high resolution image of protected  
16 elements of BR2049 to Musk and Tesla, (SAC, ¶¶ 64-65), and also engaged in a  
17 combination of intentional or negligent representations combined with silence  
18 (failure to make corrective speech) that resulted in Musk and Tesla potentially  
19 understanding they had U.S. copyright permission to use BR2049 elements, or  
20 effective immunity for BR2049 infringement claims under U.S. law. (SAC, ¶¶ 92-  
21 95.) In addition, given Musk's and Tesla's history with the BR2049 property and  
22 how they use it for product reveals, (SAC, ¶¶ 32-36), and Musk's disdain for  
23 intellectual property law, (SAC, ¶¶ 27-31), letting Musk and Tesla contract for and  
24 conduct the Event while providing content for them, (SAC, ¶¶ 47-54), combined  
25 with causing them to anticipate being able to use BR2049 in Musk's keynote  
26 warrants a finding of encouragement or inducement.

27 ///

1           232. Furthermore, once WBDI knew of the infringement, which at latest  
2 was when Alcon complained on October 16, 2024, WBDI by its silence and failure  
3 openly to denounce Musk and Tesla's conduct as infringing has effectively  
4 encouraged Musk and Tesla in not remediating, and WBDI is thereby lending  
5 support to and/or ratifying the conduct of Musk and Tesla.

6           233. The foregoing acts of Defendants WBDI, Tesla and Musk infringed  
7 upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce,  
8 create derivative works, display, distribute and publicly perform BR2049 and its  
9 protectible elements. Such actions and conduct constitute copyright infringement  
10 in violation of 17 U.S.C. § 501, *et seq.*

11           234. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and  
12 registered the exclusive rights and privileges in and to the copyrights of the above-  
13 referenced work in accordance with 17 U.S.C. § 408.

14           235. Plaintiff suffered damages as a result of Defendants' unauthorized use  
15 of BR2049 and its protectible elements.

16           236. Plaintiff is entitled to temporary, preliminary and/or permanent  
17 injunctive relief, pursuant to 17 U.S.C. § 502(a).

18           237. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to  
19 impoundment of all materials used to achieve and records documenting  
20 Defendants' exploitation of, their infringements, including without limitation all  
21 materials used by Defendants or any image generation tool employed by them to  
22 generate the Exhibit C Image.

23           238. Plaintiff is entitled to recover and seeks its actual damages and any  
24 additional profits of Defendants WBDI, Tesla and Musk attributable to the  
25 infringements, under 17 U.S.C. § 504(b).

26           239. Plaintiff also is entitled to elect to recover and seeks statutory damages  
27 under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than \$750 or more  
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1 than \$30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and  
2 believes and on that basis alleges that Defendants' acts of copyright infringement,  
3 as alleged above, were willful, intentional, and malicious. Such acts subject  
4 Defendants to liability for statutory damages under Section 504(c)(2) of the  
5 Copyright Act in the sum of up to \$150,000 per infringement.

6 240. Within the time permitted by law, Plaintiff will make its election  
7 between actual damages and profit disgorgement, or statutory damages.

8 241. Plaintiff also is entitled to a discretionary award of attorney fees under  
9 17 U.S.C. § 505.

10 242. Plaintiff seeks or reserves the right to seek any or all of the above  
11 forms of relief, in addition to prejudgment interest to the event legally available  
12 and Plaintiff's costs.

#### 13 **FOURTH CLAIM FOR RELIEF**

##### 14 ***False Affiliation and/or False Endorsement***

##### 15 ***in Violation of 15 U.S.C. § 1125(a)(1)(A) against Defendants Musk and Tesla***

16 243. Plaintiff repeats, re-alleges and incorporates herein by reference each  
17 and every allegation set forth in all of the foregoing paragraphs, and each  
18 paragraph of this SAC hereafter, as if set forth herein in full.

19 244. To the extent any of the allegations or theories in this Fourth Claim for  
20 Relief are inconsistent with other allegations or theories pled in this SAC, they are  
21 pled in the alternative.

22 245. Alcon owns the marks, trade dress and other Lanham Act-protectable  
23 interests identified in paragraphs 137-154 (together, "Alcon's Marks"), and has  
24 owned them continuously since prior to 2024.

25 246. Defendants Tesla and Musk have engaged in false representations  
26 which are likely to cause confusion, or to cause mistake, or to deceive as to the  
27 affiliation, connection or association of Tesla and Musk with Alcon or as to the  
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1 sponsorship or approval of Tesla's or Musk's goods, services, or commercial  
2 activities by Alcon.

3 247. Plaintiff alleges that Tesla and Musk engaged in the following specific  
4 conduct that together constituted false statements that constituted false  
5 representations of the type described in the foregoing paragraph 246: the conduct  
6 and statements made by Tesla and Musk at the October 10, 2024 Tesla-WBDI  
7 event as described in paragraphs 102-124 above, and as further distributed and  
8 made available to consumers thereafter by the wide dissemination to and ongoing  
9 presence and availability of, the Event Recording to consumers.

10 248. As alleged in detail in paragraphs 102-124 above, in the about eleven  
11 seconds of Event presentation on October 10, 2024 which included the Exhibit C  
12 image and Musk's accompanying voiceover, Musk and Tesla by their conduct used  
13 or evoked all of the following protectable Lanham Act interest of Alcon: a) Alcon's  
14 BLADE RUNNER 2049 mark as it is described in paragraph 137; b) Alcon's  
15 BLADE RUNNER mark as it is described in paragraph 138; b) Alcon's mark or  
16 protectable goodwill in the character K as described in paragraphs 140-142; c)  
17 Alcon's protectable trade dress in iconic or recognizable still images from BR2049  
18 such as Exhibit A and the Exhibit B images, specifically generating the Exhibit C  
19 Image and displaying it with accompanying voiceover by Musk such that it  
20 appeared to be either an actual still image from BR2049's Las Vegas Sequence, or  
21 a lightly-stylized illustration of K about to enter the irradiated Las Vegas at or near  
22 the beginning of the sequence, paragraphs 143-148; and d) a protectable  
23 combination as alleged in paragraph 148.

24 249. Tesla and Musk used Alcon's marks and trade dress to advertise cars  
25 and a car company, including in the sense of conveying an association between  
26 Tesla and its Robotaxi and Alcon, BR2049 and K, which is the type of association  
27 that Alcon licenses, and that consumers and other customers expect to be a licensed  
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1 association. The Event presentation was for all intents and purposes a long  
2 livestreamed advertisement for Tesla and its products, and it reached a substantial  
3 set of the general consuming public in the United States, and of Alcon's potential  
4 automobile brand partners on BR2049. Although Alcon is not a competitor of  
5 Tesla in the car business (it is true that Alcon does not itself sell cars), Alcon is in  
6 fact in that business of licensing the BR2049 marks and trade dress to car makers  
7 for advertising affiliation, and that is sufficiently in the zone of interests for Alcon  
8 to be a proper claimant.

9 250. Tesla's and Musk's unauthorized use of, and references, to Alcon's  
10 BR2049 marks and secondary meaning elements had and have the effect of falsely  
11 representing that Tesla's and Musk's goods and services are licensed, sponsored,  
12 endorsed, or otherwise authorized by Alcon, and/or is at the very least misleading  
13 as to these points, and in a business market (automobile brand marketing  
14 partnerships on BR2049) in which Alcon is actually an established player.

15 251. Alcon also alleges that Tesla's and Musk's conduct includes explicitly  
16 misleading statements, expressions or conduct, within the meaning of *Gordon v.*  
17 *Drape Creative, Inc.*, 909 F.3d 257 (9th Cir. 2018), if the test of *Rogers v.*  
18 *Grimaldi*, 875 F.2d 994 (2d Cir. 1989) were applied to the Lanham Act claim here,  
19 which Alcon contends would be improper. (SAC, ¶ 124.) Alcon advances and  
20 maintains all of the arguments against application of *Rogers v. Grimaldi* that  
21 Alcon's counsel set forth on April 7, 2025 at the oral argument opposing  
22 Defendants' Motions to Dismiss Plaintiff's First Amended Complaint.

23 252. Tesla's and Musk's conduct is likely to cause confusion or mistake  
24 and to deceive consumers and/or Alcon's relevant actual and potential business  
25 partners as to the endorsement, sponsorship, affiliation, connection, or association  
26 of Alcon with Tesla's and Musk's services and products. In this context, Alcon's  
27 relevant business partners include automotive brands with potential interest in  
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1 brand affiliations with BR2049, including without limitation with the BR2049-  
2 based *Blade Runner 2099* television series currently in production by Alcon. They  
3 also include business partners in the Hollywood talent pool market where Alcon is  
4 active on an everyday basis, and which Hollywood talent pool market generally is  
5 less likely to deal with Alcon, or parts of the market may be, if they believe or are  
6 confused as to whether, Alcon has an affiliation with Tesla or Musk.

7 253. Tesla and Musk engaged in the above conduct intentionally and in bad  
8 faith, conspiring to and then executing a fraudulent scheme falsely to create a  
9 purported justification or excuse to feature Alcon's BR2049 prominently at the  
10 outset of Tesla's and Musk's Robotaxi or cybercab product reveal presentation, and  
11 without paying Alcon any fee for doing so, for the purpose of using BR2049's  
12 goodwill to increase the interest level and cache of the new Tesla product pitch and  
13 product.

14 254. All of the foregoing false endorsement uses of Alcon's BR2049 marks  
15 and goodwill were commercial speech, and not subject to any defense predicated  
16 on the nature of the use being a non-commercial use or non-commercial speech.  
17 Specifically, some or all of Tesla's and Musk's speech was either (a) core  
18 commercial speech in that it proposes a commercial transaction, or in the  
19 alternative, (b) was nonetheless commercial for purposes of false endorsement law  
20 and Plaintiff's claims herein, in that the communications were advertisements,  
21 made reference to a specific product, and the speaker had an economic motivation  
22 for the communication, all within the meaning of *Bolger v. Youngs Drugs Products*  
23 *Corp.*, 463 U.S. 60 (1983) and its progeny.

24 255. As a direct and proximate result of Tesla's and Musk's wrongful  
25 actions, Alcon has suffered damages in an amount to be proven at trial, but in  
26 excess of the jurisdictional minimum.

27 256. Alcon further alleges that Tesla's and Musk's unauthorized use of  
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1 Alcon's BR2049 marks and secondary meaning elements will continue unless and  
2 until Tesla and Musk are enjoined. Alcon has no adequate remedy at law to  
3 prevent Tesla and Musk from continuing to wrongfully violate Alcon's rights, and  
4 Alcon will suffer irreparable harm unless Defendants are enjoined from continuing  
5 their wrongful conduct.

6 257. Defendants Musk and Tesla both had actual knowledge of the  
7 wrongfulness of their conduct and the high probability that such acts would cause  
8 injury and/or damage to Plaintiff. Despite their knowledge, Defendants Musk and  
9 Tesla intentionally pursued their course of conduct, resulting in injury or damage to  
10 Plaintiff.

11 **Prayer for Relief**

12 WHEREFORE, Plaintiff prays judgment be entered in its favor and against  
13 Defendants, and each of them, as follows:

14 1. **On the First Claim for Relief for Copyright Infringement:**

- 15 a. For a preliminary and permanent injunction against Defendants and  
16 anyone working in concert with them from further copying, displaying,  
17 distributing, selling, or offering to sell BR2049 or protectible elements  
18 thereof in connection with Tesla or Musk, or making derivative works  
19 thereof for such purposes.
- 20 b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of  
21 the Exhibit C Image and Event Recording and underlying materials  
22 used in violation of Plaintiff's copyrights—including digital copies or  
23 any other means by which they could be used again by the Defendants  
24 without Plaintiff's authorization—as well as all related records and  
25 documents.
- 26 c. For actual damages and all profits that Defendants derived from the  
27 unauthorized use of BR2049 or, where applicable and at Plaintiff's  
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election, statutory damages.

d. For an award of attorneys' fees.

e. For an award of pre-judgment interest as allowed by law.

f. For costs of suit.

g. For such further relief as the Court deems just and proper.

2. On the Second Claim for Relief for Vicarious Copyright Infringement:

a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell BR2049 or protectible elements thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.

b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Exhibit C image, Event Recording, and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.

c. For actual damages and all profits that Defendants derived from the unauthorized use of BR2049 or, where applicable and at Plaintiff's election, statutory damages.

d. For an award of attorneys' fees.

e. For an award of pre-judgment interest as allowed by law.

f. For costs of suit.

g. For such further relief as the Court deems just and proper.

3. On the Third Claim for Relief for Contributory Copyright Infringement:

a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying,

1 distributing, selling, or offering to sell BR2049 or protectible elements  
2 thereof in connection with Tesla or Musk, or making derivative works  
3 thereof for such purposes.

4 b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of  
5 the Exhibit C image, Event Recording, and underlying materials used  
6 in violation of Plaintiff's copyrights—including digital copies or any  
7 other means by which they could be used again by the Defendants  
8 without Plaintiff's authorization—as well as all related records and  
9 documents.

10 c. For actual damages and all profits that Defendants derived from the  
11 unauthorized use of BR2049 or, where applicable and at Plaintiff's  
12 election, statutory damages.

13 d. For an award of attorneys' fees.

14 e. For an award of pre-judgment interest as allowed by law.

15 f. For costs of suit.

16 g. For such further relief as the Court deems just and proper.

17 4. On the Fourth Claim for Relief (False Endorsement in Violation of 15 U.S.C.  
18 § 1125(a)(1)(A))

19 a. For injunctive relief, including without limitation for an order  
20 mandating that Defendants Musk and Tesla cease any further  
21 promotional or advertising use of BR2049; that Defendants place a  
22 corrective notice or disclaimer on the Event Recording and all copies  
23 thereof putting viewers on notice that the portions of the event  
24 referencing BR2049 false and misleading and that BR2049 and Alcon  
25 have no relationship or affiliation with Tesla, Musk or the cybercab  
26 product; and an order mandating that Musk and Tesla cease to  
27 distribute any further copies of the Event Recording or event livestream  
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1 that contains the BR2049 references and Exhibit C.

2 b. For compensatory damages;

3 c. Defendants' profits;

4 d. Attorney fees;

5 e. Costs of suit;

6 f. Prejudgment Interest; and

7 g. Such other and further relief as the Court may deem just and proper.

8  
9 DATED: June 16, 2025

ANDERSON YEH PC

Edward M. Anderson

Regina Yeh

11 By 

12 Attorneys for Plaintiff

13 ALCON ENTERTAINMENT, LLC

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38, on its claims against Defendants Tesla, Inc. (“Tesla”), Elon Musk (“Musk”), and Warner Bros. Discovery, Inc. (“WBDI”), Plaintiff Alcon Entertainment, LLC hereby demands a trial by jury of all matters triable to a jury.

DATED: June 16, 2025

ANDERSON YEH PC

Edward M. Anderson

Regina Yeh

By \_\_\_\_\_

Attorneys for Plaintiff

ALCON ENTERTAINMENT, LLC